IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 11 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

AMRAS TRADERS

Appearance:

MR BB NAIK with MR MANISH R BHATT for Petitioner

MR RK PATEL for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 16/01/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue,

the following question is referred to us in respect of Assessment Years 1984-85 and 1985-86 :-

"Whether the Appellate Tribunal is right in law and on facts in directing the Assessing Officer to treat the assessee as registered firm, when one of the partners was a partner in dual capacity, namely, as an individual and as representative of the HUF ?"

2. We have heard Mr BB Naik, learned counsel for the revenue and Mr RK Patel, learned counsel for the assessee. The learned counsel agree that the controversy raised herein is concluded by the decision of the Apex Court in CIT vs. Kandath Motors, (1997) 224 ITR 663 wherein the Apex Court has held that a person can be a partner in a partnership firm in his individual capacity and again in another capacity. In the facts of that case, the concerned assessee was a partner in his individual capacity and also as representing the three heirs of a deceased partner. The said assessee had signed partnership agreement in his individual capacity as well as representing heirs of the deceased. The Apex Court has held that there was nothing in the Indian Partnership Act, 1932 or the Indian Contract Act, 1872 which prevented the agreement of this nature and that the validity of the partnership could not be doubted when there were other partners as well. The Apex Court has also held that if the legal representative of the deceased is also one of the surviving partners, he can agree to join the new partnership as a nominee of the legal heirs of the deceased partner.

Applying the aforesaid principles, we have no hesitation in holding that the registration could not be refused to the partnership firm in question merely on the ground that one of the partners was a partner in dual capacity, namely, as an individual as well as a representative of the HUF.

3. In view of the above decision, we answer the question in the affirmative i.e. in favour of the assessee and against the revenue.

The reference accordingly stands disposed of with no order as to costs.

(J.M. Panchal, J.)

(M.S. Shah, J.)

sundar/-